



**STATE OF NEW JERSEY**

**FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION**

In the Matter of Health Facility  
Survey & Field Operations,  
Department of Health

CSC Docket No. 2022-1120

Administrative Appeal

**ISSUED: NOVEMBER 22, 2021  
(SLD)**

The Department of Health (DOH) requests that the provisions of *N.J.A.C.* 4A:3-5.7(d) be relaxed to provide certain individuals in exempt non-limited (NL) titles, overtime for any hours worked on October 23 and 24, 2021, after 35 hours.

In its request, DOH explains that it is seeking retroactive approval to pay four employees in NL titles overtime after 35 hours worked. In this regard, DOH maintains that the four employees were on-site at a Long Term Care facility (LTC) during the weekend of October 23 and 24, 2021, to ensure that the residents were being cared for and the facility was in fact being cleaned. The facility had 10 tasks it needed to complete in order for it to remain in compliance and to be allowed to remain open. The employees were there to ensure that the changes were happening, and the patients were safe, cleaned and fed. The employees identified continued violations that the facility was also forced to fix. Without the employees being on-site, the DOH would have had no direct oversight and the LTC facility would have had to been shut down on Monday, necessitating the transfer of 142 residents, including 10 of whom were on ventilators. Therefore, DOH requests that the provisions of *N.J.A.C.* 4A:3-5.7(d) be relaxed to allow for the retroactive payment of overtime for hours worked in excess of 35 hours on October 23 and 24, 2021, for the following individuals:

<u>NAME</u>	<u>TITLE</u>	<u>LOCATION</u>
Andrea McCray-Reid	Supervising Health Care Evaluator*	Health Facility Survey & Field Operations
Laura Sagaard	Supervisor of Inspections, Health Facilities Evaluation & Licensing**	Health Facility Survey & Field Operations

Sofie Xyloportas	Supervisor of Inspections, Health Facilities Evaluation & Licensing**	Health Facility Survey & Field Operations
Patricia Feeley	Supervising Health Care Evaluator*	Health Facility Survey & Field Operations

\* Salary range R27.

\*\*Salary range S29.

Based on these circumstances, the Division of Agency Services indicated its support of DOH's request.

### CONCLUSION

*N.J.A.C.* 4A:3-5.3 provides in pertinent part that:

- (a) Employees in the following groups may be eligible for overtime compensation for work performed beyond their regular work hours, but not more than 40 hours:

\* \* \*

3. Employees in non-limited titles (NL, NE) who meet unusual work time requirements, at the discretion of the appointing authority.

\* \* \*

- (c) An employee shall be eligible for overtime compensation under this section only when:

1. The employee is in pay status for the full number of hours in his or her regular workweek;
2. The employee works at least one hour beyond the regular workweek or approved alternative workweek program of 70 hours in a 14 day work period, for employees in 35 hour fixed workweek titles (35, 3E); and
3. The work is covered by the job specification for the employee's title, except for emergencies as provided in *N.J.A.C.* 4A:3-5.7(d).

- (d) Overtime compensation under this section shall be paid as follows:

\* \* \*

2. Employees in non-limited titles (NL, NE) who meet unusual work time requirements may, at the discretion of the appointing authority, be compensated through either a provision for flexible work patterns or a grant of comparable amounts of time off to a maximum of one hour for each hour of unusual work time, provided that employees serving as a commissioner or department head; an assistant or deputy commissioner; a division director or equivalent; and employees in exempt positions in titles which are not represented in collective negotiations with established salary ranges at or above range 32, and in such exempt positions in titles with single rates or no range who are receiving a salary at or above the first step of such ranges, shall not be granted such compensation. In no event shall employees in non-limited titles have any entitlement to cash overtime compensation.

*N.J.A.C.* 4A:3-5.6(a)3 provides, in pertinent part, that employees in NL titles shall not be eligible for cash overtime compensation, except as provided in *N.J.A.C.* 4A:3-5.7(d). *N.J.A.C.* 4A:3-5.7(d) provides, in pertinent part that, eligibility for overtime compensation for exceptional emergencies shall be as follows:

1. When an agency head declares an exceptional emergency involving a critical service disruption that poses a danger to health or safety, he or she may authorize:
  - i. Cash overtime compensation for non-limited employees in titles with established salary ranges below range 32 performing emergency related work. For these circumstances employees in non-limited titles shall be deemed to have a 40 hour workweek.
  - ii. Overtime compensation for work not covered by the job specification. *See N.J.A.C.* 4A:3-5.3(c)3.

*N.J.A.C.* 4A:3-5.2 defines “workweek” as, the period beginning 12:01 A.M. Saturday and ending midnight the following Friday except in those instances where the Commissioner or his or her representative has approved an alternate workweek for overtime purposes for employees engaged in seven day operations. *N.J.A.C.* 4A:3-5.2 defines “pay period” as the period beginning 12:01 A.M. Saturday and ending midnight the second Friday following. It is noted that October 23, 2021 was the first day of a pay period.

*N.J.A.C.4A:3-5.7(e)2* provides, in pertinent part that, eligibility for special project rate compensation for NL employees who perform extraordinary work activities on a limited or periodic basis necessitating work time beyond the general workweek in the same capacity from which the employee is regularly employed may be paid special project rates as approved by the Chairperson.

*N.J.A.C. 4A:1-1.2(c)* provides that a rule may relaxed for good cause, in a particular circumstance, in order to effectuate the purposes of Title 11A of the New Jersey Statutes Annotated.

Due to the continued health emergency, and that the work performed over the weekend of October 23 and 24, 2021, was necessary to keep 142 individuals in a vulnerable population safe and secure, the above indicated employees in NL titles have met the requirements set forth in *N.J.A.C. 4A:3-5.7(d)* and *N.J.A.C. 4A:3-5.7(e)2* for special project rate compensation. However, as October 23, 2021 was the start of a new pay-period, as well as the start of a new work week, the above-noted employees had not yet been in pay status for 35 hours for the work week, and thus, they cannot receive overtime compensation. Therefore, DOH's request cannot be granted.

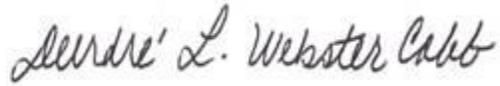
However, based on the extreme circumstances as previously noted, it is appropriate to establish a special project compensation rate for October 23 and October 24, 2021, at one and one-half times for the above noted individuals' hourly rate of pay. It is noted that this determination is based on the specific facts and circumstances presented and **shall not** be used as precedent for any future matter.

### ORDER

Therefore, it is ordered that DOH's request relax *N.J.A.C. 4A:3-5.7(d)* be denied. However, under these extreme circumstances, the Civil Service Commission orders the relaxation of *N.J.A.C. 4A:3-5.7(e)2* and that a special project rate be provided for hours worked on October 23 and 24, 2021 for that workweek\_as noted above.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 17<sup>TH</sup> DAY OF NOVEMBER 2021



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